

AMENDED IN ASSEMBLY JUNE 1, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 621**

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**Introduced by Assembly Member Roger Hernández**

February 24, 2015

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An act to add Section 2750.8 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL’S DIGEST

AB 621, as amended, Roger Hernández. Drayage truck operators.

Existing law governs the relationship between an employer and an employee with regard to hiring, promotion, discipline, wages and hours, working conditions, and administrative and judicial remedies. Existing law sets forth guidelines for determining whether a person who performs work for another pursuant to a contract is an employee or an independent contractor. Existing law authorizes the Labor Commissioner to investigate employee complaints and to conduct a hearing in any action to recover wages, penalties, and other demands for compensation.

This bill would, notwithstanding any law, relieve a motor carrier performing drayage services of liability for statutory or civil penalties associated with misclassification of commercial drivers as independent contractors if the motor carrier enters into a consent decree with the Labor Commissioner prior to January 1, 2017, whereby the motor carrier agrees to convert all of its commercial drivers to employees, and the consent decree contains prescribed components, including, but not limited to, an agreement by the motor carrier to pay all wages, benefits, and taxes owed, if any. *The bill would permit a consent decree to contain a provision authorizing the Labor Commissioner to recover from the carrier specified costs associated with the consent decree.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 2750.8 is added to the Labor Code, to  
2 read:
- 3 2750.8. (a) Notwithstanding any law, a motor carrier  
4 performing drayage services at one or more ports in this state shall  
5 be relieved of liability for statutory or civil penalties associated  
6 with misclassification of commercial drivers as independent  
7 contractors if the motor carrier enters into a consent decree with  
8 the Labor Commissioner whereby the motor carrier agrees to  
9 convert all of its commercial drivers to employees.
- 10 (b) A consent decree entered into pursuant to subdivision (a)  
11 shall contain all of the following:
- 12 (1) An agreement by the motor carrier to pay all wages, benefits,  
13 and taxes owed, if any, to or in relation to all of its converted  
14 commercial drivers covering the period of time from the first date  
15 of misclassification to the date the consent decree is entered into,  
16 but not exceeding the applicable statute of limitations.
- 17 (2) An agreement by the motor carrier to maintain any converted  
18 commercial driver positions as employee positions.
- 19 (3) An agreement by the motor carrier that any future  
20 commercial drivers hired to perform the same or similar duties as  
21 those employees converted pursuant to subdivision (a) shall be  
22 presumed to have employee status and that the motor carrier shall  
23 have the burden to prove by clear and convincing evidence that  
24 they are not employees in any administrative or judicial proceeding  
25 in which their employment status is an issue.
- 26 (4) Any other provisions the Labor Commissioner deems  
27 necessary to carry out the intent of this section or to enforce the  
28 provisions of the consent decree.
- 29 (c) As used in this section, the following terms have the  
30 following meanings:
- 31 (1) "Commercial driver" means a person who holds a valid  
32 commercial driver's license hired or contracted with to provide  
33 port drayage services.
- 34 (2) "Motor carrier" means a registered owner, lessee, licensee,  
35 or bailee of a commercial motor vehicle as set forth in Section

1 34500 of the Vehicle Code, who operates or directs the operation  
2 of any such vehicle on a for-hire or not-for-hire basis to perform  
3 port drayage services.

4 (3) "Port" means any sea or river port in this state.

5 (d) *A consent decree entered into pursuant to subdivision (a)*  
6 *may contain a provision authorizing the Labor Commissioner to*  
7 *recover from the motor carrier an amount necessary to cover the*  
8 *Labor Commissioner's reasonable costs associated with the review,*  
9 *approval, and compliance with the consent decree.*

10 ~~(d)~~

11 (e) This section shall not apply to a motor carrier that has a  
12 pending civil lawsuit against it in state or federal court alleging  
13 misclassification of commercial drivers where the lawsuit was  
14 filed prior to January 1, 2015.

15 ~~(e)~~

16 (f) This section shall apply only to consent decrees entered into  
17 by the Labor Commissioner prior to January 1, 2017.